

THOMAS CONNELL

IBLA 83-831

Decided July 27, 1984

Appeal from California State Office, Bureau of Land Management, decision rejecting in part noncompetitive oil and gas lease offer CA 13349.

Set aside and remanded.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases:
Noncompetitive Leases

Where BLM rejects a noncompetitive oil and gas lease offer because of a determination that the land is within the known geologic structure of a producing oil or gas field and fails to support the decision in the record, the decision will be set aside and the case remanded to substantiate the basis of the KGS determination in light of the information tendered by the offeror on appeal.

APPEARANCES: Thomas Connell, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Thomas Connell appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated May 17, 1983, rejecting in part his noncompetitive oil and gas lease offer CA 13349. The basis for the decision was that the land was subject only to competitive leasing.

In November 1982, BLM listed parcel CA 118 as available for simultaneous oil and gas lease applications. The public land contained in the parcel was described as lots 1 and 2 of NW 1/4, W 1/2 E 1/2 sec. 18; lot 1 of NW 1/4, W 1/2 NE 1/4 sec. 30, T. 27 S., R. 22 E., Mount Diablo meridian, Kern County, California (480 acres). Connell's application was selected with first priority in the January 1983 drawing and, after receiving instructions from BLM, he submitted signed lease offer forms and advance rental on February 24, 1983. Thereafter, BLM requested Minerals Management Service (MMS), to "clear list" the lands in the lease offer as being situated outside any known geologic structure (KGS) of a producing oil or gas field. The responsive memorandum stated that the land described in sec. 30 is within an undefined addition to the Lost Hills KGS effective November 24, 1982. As a result, BLM issued its May 17, 1983, decision rejecting the lease offer for the 160 acres in sec. 30. Oil and gas lease CA 13349 was issued effective June 1, 1983, for the remaining 320 acres.

In his statement of reasons for appeal, Connell contends that "no oil or gas has ever been produced within many miles of the rejected acreage." He asserts that "Gulf Oil Company drilled a well in Sec. 25 of Township 27 South, Range 21 East, approximately two years ago * * * [which] never produced oil or gas."

Land within a KGS of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive lease offer for such land is properly rejected where, before the lease is actually issued, BLM determines that the land is within the KGS of a producing oil or gas field. 30 U.S.C. § 226(b) (1982); Bruce Anderson, 63 IBLA 111 (1982); Ervin Wheeler, 51 IBLA 66 (1980).

[1] The Secretary of the Interior has delegated the duty to determine the KGS of producing oil and gas fields and the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field. 1/ Bruce Anderson, *supra*. An applicant for an oil and gas lease who challenges a determination that lands are situated within a KGS has the burden of showing that the finding is in error and the determination will not be disturbed in the absence of a clear and definite showing of error. Ervin Wheeler, *supra* at 69. However, where on appeal from rejection of a noncompetitive oil and gas lease offer, appellant submits evidence tending to contradict a determination that land embraced in the lease offer is within a KGS and there is nothing in the record to support the decision except the conclusory statement that the land is in a KGS, the decision may appropriately be set aside and the case remanded to substantiate the basis for the KGS determination in light of the information tendered by appellant. Bruce Anderson, *supra*; Hepburn T. Armstrong, 60 IBLA 140 (1981).

In the present case, there is no basis on which to sustain the challenged KGS determination. The only evidence before us is the statement that sec. 30 is part of the undefined addition to the Lost Hills KGS and appellant's assertions in rebuttal. 2/ Accordingly, we find it appropriate to remand the case.

1/ As of November 1982, the Secretary had delegated this duty to MMS. See 47 FR 4751 (Feb. 2, 1982). This function has since been reassigned to BLM by Secretarial Order No. 3087. 48 FR 8983 (Mar. 2, 1983).

2/ The record contains a July 5, 1983, California State Office internal memorandum from the Deputy State Director, Operations, to the Deputy State Director, Minerals Resources, wherein the following was stated: "[W]e think it is appropriate to document the record to support the action taken."

On Dec. 27, 1983, the Board received the geologist's report supporting revision of a KGS in San Luis Obispo County. The attached routing slip was marked, "related to CA 13349 which is docketed under IBLA 83-831." However, the report concerns an unnamed, undefined KGS in sec. 31, T. 11 N., R. 26 W., San Bernardino meridian, San Luis Obispo County, California, which is approximately 35 miles south of the KGS challenged in this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge

